

ORDINANCE NO. _____-2008

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTION 9.5-511 OF THE CODE OF ORDINANCES CONCERNING AMENDMENTS TO THE LAND DEVELOPMENT REGULATIONS, LAND USE DISTRICT MAP AND FUTURE LAND USE MAP; PROVIDING A METHOD OF PROTEST FOR LAND USE DISTRICT MAP AND FUTURE LAND USE MAP CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS, PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, there has been a difference of opinion in the interpretation of the protest procedure of Section 9.5-511 of the Monroe County Code concerning redesignations of the land use district map; and

WHEREAS, this matter of interpretation has been the source of litigation which, although litigated, did not result in a codified change to the regulations; and

WHEREAS, no formal process is established in the Monroe County Code for submitting a protest to the Board of County Commissioners; and

WHEREAS, changes to the Land Use District Map (zoning) occur after the changes to the Future Land Use Map, and thus there should be a method to protest the FLUM amendment prior to a change being made to the Land Use District Map;

NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Section 9.5-511 of the Monroe County Code is amended as follows:

Sec. 9.5-511. Amendments to this chapter and to the Future Land Use Map.

1 (a) *Purpose:* The purpose of this article is to provide a means for changing the text of this
2 chapter, which also includes changes to the land use district map. It is also intended to add to
3 the statutory procedures and requirements for changing the Future Land Use Map (FLUM) at
4 the transmittal stage. It is not intended to relieve particular hardships, nor to confer special
5 privileges or rights on any person, nor to permit ~~a~~an adverse change in community
6 character, analyzed in volume I of the plan., but only to make necessary adjustments in light
7 of changed conditions or incorrect assumptions or determinations as determined by the
8 findings of the board of county commissioners. In determining whether to grant a requested
9 amendment, the board of county commissioners shall consider, in addition to the factors set
10 forth in this article, the consistency of the proposed amendment with the provisions and
11 intent of the plan.

12 (b) *Authority:* The board of county commissioners may amend the text of this chapter upon
13 the compliance with the provisions of this article. Amendments may be proposed by the
14 board of county commissioners, the planning commission, the director of planning, or the
15 owner or other person having a contractual interest in property to be affected by a proposed
16 amendment or FLUM change at the transmittal stage. The director of planning shall have the
17 responsibility to establish the format as approved by the board of county commissioners by
18 which applications can be submitted and shall have the authority to screen those
19 amendments, processing only those which are presented on a complete application; ~~and t~~
20 Those deemed insufficient shall be returned within 30 days to the applicant for correction
21 and re-submittal. within twenty-one (21) days. FLUM changes shall be processed prior to
22 any application being made to amend the land use district map.

1 (c) *Timing:* Applications for map and text amendments to this chapter shall be accepted at
2 any time. The planning director shall review and process the map and text amendment
3 applications as they are received and pass them on to the development review committee and
4 the planning commission for recommendation and final approval by the board of county
5 commissioners.

6 (d) *Procedures:*

7 (1) *Proposals by Board of County Commissioners, Planning Commission or*
8 *Director of Planning:* Proposals for amendments by the board of county commissioners, the
9 planning commission or the director of planning shall be transmitted to the planning
10 department and the development review committee for review and comment.—~~and~~
11 ~~recommendation to the planning commission.~~ Staff shall make a recommendation to the
12 planning commission.

13 (2) *Proposals by Affected Landowners:* Any landowner or other person having a
14 contractual interest in property desiring to petition the board of county commissioners for an
15 amendment to the land use district map or FLUM shall be required to file an application with
16 the director of planning accompanied by a nonrefundable application fee as established from
17 time to time by the board of county commissioners to defray the actual cost of processing the
18 application ~~[see section 9.5-522].~~ The director of planning shall transmit the proposed
19 amendment to the planning department and the development review committee for review
20 and comment. ~~preparation of a recommendation to the planning commission.~~ Staff shall
21 make a recommendation to the planning commission.

1 (3) *Public Hearing(s)*: The planning commission and the board of county
2 commissioners shall each hold at least one (1) public hearing on a proposed amendment to
3 the text of this chapter or to the land use district map or FLUM at the transmittal stage.

4 a. *Advertised and Mailed Notice*: Notice of the public hearings for a proposed amendment
5 to the text of this chapter, ~~which also includes changes to the land use district map, and the~~
6 transmittal of the FLUM change shall be provided as required by section 9.5-45 of this Code.

7 In addition, notice of changes to the land use district map and FLUM shall be mailed to
8 owners within three hundred (300) feet of the affected property thirty days prior to the
9 required hearing before the board of county commissioners for the land use district map
10 amendment or the FLUM transmittal hearing.

11 b. *Posting of notice*: Posting of notice shall be made in accordance with the requirements
12 of section 9.5-45.

13 c. *Other notice*: Notice of all public hearings shall be posted on the Monroe County
14 Website as soon as is practical. Failure to post notice on the Monroe County Website shall
15 not constitute grounds for the cancellation of any public hearing nor shall it constitute
16 grounds for the cancellation of any action taken by a board at such a meeting.

17 (4) *Action by Planning Commission*: The planning commission shall review the
18 application, the reports and recommendations of the department of planning, the comments
19 of the development review committee, and the testimony given at the public hearing, and
20 shall submit its recommendations and findings to the board of county commissioners.

21 (5) *Action by Board of County Commissioners Following Public Hearing(s)*:

22 a. The board of county commissioners shall consider the reports and recommendation of the
23 Planning Commission, planning staff, and the testimony given at the public hearings.

b. The board of county commissioners may consider the adoption of an ordinance enacting the proposed change based on one (1) or more of the following factors:

(i) Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;

(ii) Changed assumptions (e.g., regarding demographic trends);

(iii) Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;

(iv) New issues;

(v) Recognition of a need for additional detail or comprehensiveness; or

(vi) Data updates;

(vii) For FLUM changes, the principles for guiding development as defined in the Florida statutes relating to changes to the comprehensive plan.

~~c. however, in~~ In no event shall an amendment be approved which will result in an adverse community change to the planning area in which the proposed development is located or to any area in accordance with a Liveable Communities Master Plan pursuant to findings of the Board of County Commissioners.

e. (6)Protest Procedure

a. A written protest concerning an application for an amendment to the land use district map or a FLUM amendment at the transmittal stage may be filed before the BOCC hearing by the owners of no less than twenty (20) percent of the area of the land to be affected. Protests concerning a FLUM amendment may be made only at the transmittal hearing. In the event of a written protest against such amendment by owners of twenty (20) percent of the property to be rezoned or proposed for a new future land use designation, where the signatures and

1 protest are found to be true and accurate, the amendment shall not become effective except
2 by the favorable vote of four (4) members of the board of county commissioners. Rounding
3 up of decimals and percentages shall not be permitted.

4 b. A written protest concerning an application for an amendment to the land used district
5 map or a FLUM amendment at the transmittal stage may be filed by twenty (20) percent of
6 the owners of land within three hundred (300) feet of the affected property. Protests
7 concerning a FLUM amendment may be made only at the transmittal hearing. In the event of
8 a written protest of twenty (20) per cent of the owners within 300 feet of the affected
9 property for a future land use map transmittal or a land use map designation , the
10 amendment shall not become effective except by the favorable vote of four (4) members of
11 the board of county commissioners. Rounding up of decimals and percentages shall not be
12 permitted.

13 c. Such protests must be on a form available from the county, by a statement from each
14 individual owner, under penalties of perjury, with the name, address, parcel real estate
15 number, home address and telephone number of the owner. In the event of ownership by
16 multiple parties, only one owner is required to file a protest. Condominium, cooperatives, or
17 statutory time share program owners may file protests through their associations and shall be
18 counted as one owner and one property in the number of owners to calculate any percentage.

19 d. The originals of the written protests must be filed with the Clerk of the board no later than
20 the fifth working day before the day of the first County Commission meeting at which the
21 public hearing on the FLUM transmittal or map amendment will be heard. Upon receipt,
22 the Clerk shall furnish a copy to the County Attorney, the County Administrator, and to the

1 applicant requesting the amendment. No further protests will be accepted by the Clerk or the
2 board.

3 e. The board shall not vote until the signatures, ownership, and protests have been verified
4 by the Growth Management Division and County Attorney using information from the
5 Property Appraiser and the official records of Monroe County. Every reasonable means
6 shall be used by county staff to resolve the validity of the protest by the time of the public
7 hearing, but if this cannot be accomplished the board shall continue the item. If the time
8 requirements of the Florida Statutes for transmittals cannot be met, the proposed FLUM
9 amendment shall be held over until the next date for transmittal.

10 f. The area used as right of way for U.S. 1 shall not be included in any calculations for
11 number of owners or percentage of ownership, but shall be included in the distance
12 calculation from the affected property.

13 g. Protests shall not be considered unless received as prescribed above. Any owner may
14 withdraw a protest up until the conclusion of the public hearing at which the item will be
15 heard. ~~In the event of a written protest against such amendment signed by the owners of~~
16 ~~twenty (20) percent or more either of the area of the lots or land included in the proposed~~
17 ~~amendment or of the lots or land immediately adjoining the property to be affected and~~
18 ~~extending two hundred (200) feet therefrom, such amendment shall not become effective~~
19 ~~except by the favorable vote of four (4) members of the board of county commissioners.~~

20 d.(7) Majority of Board. Except as provided in paragraph (6) above, the board of county
21 commissioners may adopt the proposed amendment or the proposed amendment as modified
22 by not less than a majority of its total membership.

1 (e) *Typographical or Drafting Errors:* Amendments to the text to correct typographical or
2 drafting errors may be adopted by the board of county commissioners without posted notice
3 or public hearing at any regular meeting. As long as the county is within an area of critical
4 state concern, notice of such amendments shall be transmitted to the Florida Department of
5 Community Affairs within thirty (30) days.

6 **Section 2. Severability.**

7 If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall
8 be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not
9 affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof
10 shall be confined to the section, paragraph, subdivision, clause, sentence, or provision
11 immediately involved in the controversy in which such judgment or decree shall be rendered.

12 **Section 3. Conflicting Provisions.**

13 In the case of direct conflict between any provision of this ordinance and a portion or
14 provision of any appropriate federal, state, or County law, rule code or regulation, the more
15 restrictive shall apply.

16 **Section 4. Transmittal.**

17 This ordinance shall be transmitted by the Planning and Environmental Resources
18 Department to the Florida Department of Community Affairs to determine the consistency of
19 this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

20 **Section 5. Filing.**

21 This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall
22 not become effective until a notice is issued by the Department of Community Affairs or
23 Administration Commission approving the ordinance.

Section 6. Codification. This ordinance shall be transmitted to Municipal Code Corporation for inclusion in the Monroe County Code.

Section 7. Effective Date. This ordinance shall become effective as provided by law and stated above.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ of _____ 2009.

Mayor George Neugent _____

Mayor Pro Tem Sylvia J. Murphy _____

Commissioner Kim Wigington _____

Commissioner Heather Carruthers _____

Commissioner Mario Di Gennaro _____

(SEAL) BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

Attest: DANNY L. KOLHAGE, CLERK

By _____

Deputy Clerk

By _____

Mayor/Chairperson